



The Competitive Carriers Association

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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*
WT Docket No. 11-65

Dear Ms. Dortch:

RCA – The Competitive Carriers Association urges the Commission promptly to designate for hearing AT&T’s proposed acquisition of T-Mobile USA. The record developed in this proceeding confirms that the proposed acquisition would cause substantial harm to competition and consumers and thus would undermine the public interest. Among other things, the transaction would significantly increase concentration in an already concentrated market; it would give AT&T control of enormous amounts of scarce spectrum; it would give AT&T the power to raise competitors’ costs by inflating roaming and backhaul rates and limiting competitors’ access to desirable handsets; and it would result in higher retail prices and diminished choice for consumers. Based on a thorough review of the relevant evidence, the Department of Justice has concluded that “unless this acquisition is enjoined, customers of mobile wireless telecommunications services likely will face higher prices, less product variety and innovation, and poorer quality services...”¹ Chairman Genachowski likewise recognized that the record in this proceeding “raises serious concerns about the impact of the proposed transaction on competition.”²

The record also establishes that the purported efficiencies of the transaction are largely unproven and in any event would be dwarfed by competitive harms. The Commission has held that “where a proposed merger would result in a significant increase in concentration in an already concentrated market, parties advocating the merger will be required to demonstrate that

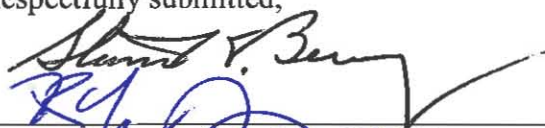
¹ Complaint, *United States of America v. AT&T Inc. et al.*, No. 1:11-cv-1560, Dkt. 1 (D.D.C. filed August 31, 2011), at ¶ 3.

² Statement of FCC Chairman Julius Genachowski (Aug. 31, 2011), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0831/DOC-309371A1.pdf.

claimed efficiencies are particularly large, cognizable and non-speculative.”³ The parties have not satisfied that exacting standard. Indeed, despite AT&T’s repeated assertions that the proposed transaction would spur increased investment and create jobs, as recently as last week the Commission’s staff confirmed that “AT&T to date has produced almost nothing” in response to the Commission’s request for data that might support such claims.⁴

Accordingly, the proposed transaction cannot be approved. Under the applicable standard of review, if the Commission is “unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact,” it at least must designate the application for hearing (if it does not reject the application outright).⁵ The record makes clear that the proposed transaction would not serve the public interest. Moreover, at a minimum, there is no doubt the evidence presents a “substantial and material question of fact” regarding the impact on the public interest. The Commission therefore should act promptly to designate the transaction for hearing.

Respectfully submitted,



Steven K. Berry, President and CEO
Rebecca Murphy Thompson, General Counsel
RCA – The Competitive Carriers Association

³ *Applications of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, ¶ 103 (2002) (“*EchoStar/Hughes Hearing Designation Order*”).

⁴ Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau to Richard L. Rosen, Counsel to AT&T, WT Docket No. 11-65 (Oct. 13, 2011).

⁵ *EchoStar/Hughes Hearing Designation Order*, ¶ 25.